

ORIGINAL FILED

JUL 17 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RECEIVED

JUL 13 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 MELINDA HAAG (CA Bar No. 132612)
United States Attorney
2 JOANN M. SWANSON (CA Bar No. 88143)
Chief, Civil Division
3 SARA WINSLOW (DC Bar No. 457643)
Assistant United States Attorney
4 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
5 Telephone: (415) 436-6925
Facsimile: (415) 436-6748
6 sara.winslow@usdoj.gov
Attorneys for the United States of America

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 UNDER SEAL,) No. C 12-2301 SI
11 Plaintiff,)
12 v.)
13 UNDER SEAL,)
14 Defendants.)
15 _____)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION;
[PROPOSED] ORDER**

FILED UNDER SEAL

1 MELINDA HAAG (CA Bar No. 132612)
United States Attorney
2 JOANN M. SWANSON (CA Bar No. 88143)
Chief, Civil Division
3 SARA WINSLOW (DC Bar No. 457643)
Assistant United States Attorney
4 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
5 Telephone: (415) 436-6925
Facsimile: (415) 436-6748
6 sara.winslow@usdoj.gov
Attorneys for the United States of America

FILED

JUL 17 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 UNITED STATES *ex rel.* COHEN,) No. C 12-2301 SI
11 Plaintiff,)
12 v.) UNITED STATES' NOTICE OF
13 TRESCA *et al.*,) ELECTION TO DECLINE
14 Defendants.) INTERVENTION;
15) [PROPOSED] ORDER
16 _____)
17) FILED UNDER SEAL

17 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies
18 the Court of its decision not to intervene in this action.

19 Although the United States declines to intervene, it respectfully refers the Court to 31
20 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United
21 States; providing, however, that the "action may be dismissed only if the court and the
22 Attorney General give written consent to the dismissal and their reasons for consenting." *Id.*
23 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this
24 language, the United States only has the right to a hearing when it objects to a settlement or
25 dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir.
26 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

27 Therefore, the United States requests that, should either the relator or the defendants
28

1 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
2 United States with notice and an opportunity to be heard before ruling or granting its approval.

3 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
4 pleadings filed in this action be served upon the United States. The United States also
5 requests that orders issued by the Court be sent to the government's counsel. The United
6 States reserves its rights to order any deposition transcripts and to intervene in this action, for
7 good cause, at a later date. See 31 U.S.C. § 3730(c)(3).

8 Finally, the United States requests that the Court unseal: the relator's Complaint, this
9 Notice of Election to Decline Intervention, with (proposed) Order lifting the seal, and all other
10 matters occurring in this action after the date the Court enters the unsealing order. The United
11 States also requests that all other contents of the Court's file in this matter (including, but not
12 limited to, any applications filed by the United States for extensions of the sixty-day
13 investigative period, any applications for partial lifting of the seal, and any orders previously
14 entered in this matter) remain under seal and not be made public or served upon the
15 defendants.

16 Respectfully submitted,

17 MELINDA HAAG
United States Attorney

18 Dated: July 13, 2012

19 By:

20 
SARA WINSLOW
Assistant United States Attorney
Attorneys for the United States

21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

1
2 **[PROPOSED] ORDER**
3

4 The United States having declined to intervene in this action pursuant to the
5 False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

6 IT IS ORDERED that:

7 1. The Complaint, this Order, and the accompanying United States' Notice of
8 Election to Decline Intervention are hereby unsealed.

9 2. The relator shall serve the Complaint on defendants.

10 3. Any applications and/or declarations that have been filed under seal by the
11 United States for an extension of the sixty-day investigative period or for any other reason
12 shall remain under seal and not be made public or served upon the defendants.

13 4. The seal shall be lifted as to all other matters occurring in this action after
14 the date of this Order.

15 5. The parties shall serve all pleadings and motions filed in this action,
16 including supporting memoranda, upon the United States, as provided for in 31 U.S.C.
17 § 3730(c)(3). The United States may order any deposition transcripts and is entitled to
18 intervene in this action, for good cause, at any time.

19 6. All orders of this Court shall be sent to the United States.

20 7. Should the relator or the defendants propose that this action be dismissed,
21 settled, or otherwise discontinued, the Court will provide the United States with notice and an
22 opportunity to be heard before ruling or granting its approval.

23 IT IS SO ORDERED.

24 Dated: 7/16/12

25 HON. SUSAN ILLSTON
26 United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION;
[PROPOSED] ORDER**

United States, ex rel. Cohen v. Tresca, et al.
C 12-2301 SI (UNDER SEAL)

to be served this date upon each of the persons indicated below at the address shown:

**John Reed
3339 Irving Street
San Francisco, CA 94122**

BY FIRST CLASS MAIL by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

BY PERSONAL SERVICE (BY MESSENGER): I caused such envelope to be delivered by hand to the person or offices of each addressee above.

BY FACSIMILE (FAX): I caused each such document to be sent by facsimile to the person or offices of each addressee above.

BY E-MAIL: I caused each such document to be sent by e-mail to the person or offices of each address above.

BY FEDERAL EXPRESS

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 13, 2012.


KATHY TERRY
Legal Assistant